

## CHAPTER 7

### REPORTING VIOLATIONS OR FINDINGS OF “NO VIOLATION”

A. **OVERVIEW.** One of the most important responsibilities of investigating a violation of the Antideficiency Act is that of documenting the results and preparing the necessary reports.

1. The investigating officer must submit a detailed report to the appointing official.

2. The Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components shall ensure that a summary report of violation is prepared and submitted to the Office of the Under Secretary of Defense (Comptroller) within 9 months of discovery of the violation. This report should summarize the results of the investigation report and include as attachments the statement(s) of the individual(s) named responsible and other significant information.

3. Letters reporting a violation to the President, the Office of Management and Budget, and the Congress are required and will be prepared by the Office of the Under Secretary of Defense (Comptroller).

B. **INVESTIGATING OFFICER’S REPORT OF VIOLATION.** At the conclusion of an investigation, the investigating officer shall prepare a Report of Violation that documents the results of the investigation. The report shall be completed within 9 months of appointment, unless an extension has been granted in accordance with the provisions in Chapter 5 of this Volume. The timeline for preparing the report should take into consideration the review process to meet the 9-month deadline for submitting the final report.

1. The report shall be prepared in accordance with the policies and procedures in DoD Directive 7200.1, “Administrative Control of Appropriations,” and chapter 5 of this Volume. Investigating officers shall use the checklist provided in Enclosure 5-1 to ensure that all appropriate elements have been considered in the report.

- a. The appointing official and legal counsel also shall ensure that the report includes all pertinent items. For example, the investigating officer's report should contain statements of individuals having knowledge of the transaction(s) causing the violation, including the person(s) determined to be responsible.

- b. Documentation evidencing all material elements of the violation and supporting the conclusions reached shall be included with the report.

- c. The holder of funds shall be identified by name and position and an evaluation made of the exercise of his or her responsibilities.

2. The formal Report of Violation has no detailed format requirements, but must contain the following six parts: Part I, Authority; Part II, Matters Investigated; Part III, Facts; Part IV, Discussion; Part V, Conclusions; and Part VI, Recommendations.

a. Part I, Authority, shall contain the names, ranks or grades, and titles of the appointing official and the investigating officer(s), the date of the appointment, and an overview of the issues that are to be investigated.

b. Part II, Matters Investigated, shall contain a summary of the scope of the investigation and the methods used to accomplish the investigation, for example, face-to-face interviews; research of legal, financial, and management issues; written explanation of the facts of the potential violation, etc. It should discuss the issues and the areas or functions that were reviewed, evaluated, and investigated. The names, ranks, and titles of the individuals that were interviewed should be included. Part II should contain a discussion on any related areas and matters that were not investigated and the rationale for omitting them from the investigation.

c. Part III, Facts, shall contain the details of what was actually determined and documented during the investigation. Attachments that substantiate the details should be referenced. For example, the amount of funds that were involved in the violation; the section or subsection of Title 31, United States Code that was violated; the year and name of the appropriation(s) involved; the date(s) on which the potential violation occurred and when and how it was discovered; the name and location of the organization involved; the results of interviews of individuals involved in the violation; and a summary of how the area(s), procedures, processes, etc.--that were involved in the investigation--operated. If the investigation has been undertaken because of an audit report, that report shall be identified by title, number, date, and issuing audit organization. If the investigation was conducted as a result of a memorandum or letter directing an investigation, that document should be referenced and a copy attached to the report. The checklists at enclosures 5-1 and 7-1 should be used to ensure that all essential items are discussed.

d. Part IV, Discussion, shall contain a summary of what was accomplished during the investigation. Include a discussion of the evolution of the issues being investigated, number of people interviewed, mitigating circumstances surrounding the violation, issues that could or could not be proved during the investigation and the supporting rationale, any issues that cannot be agreed upon by those individuals involved, and any other comments that are pertinent to the investigation.

e. Part V, Conclusions, shall contain a detailed summary of what actually caused the violation and the associated circumstances; what actions should have been, but were not, taken by specific individuals; what actions were taken that should not have been taken; why the violation happened; whether the violation was committed knowingly and willfully; the name(s) of the individuals responsible for the violation; and the name(s) of the organization(s) involved.

f. Part VI, Recommendations, shall contain recommendations for (1) improving the overall and specific policies, procedures, and processes used by the functional areas involved in

the violation; (2) revising specific statutes or regulatory guidance that may have been involved; (3) obtaining funding to correct the violation; (4) imposing appropriate disciplinary action against the individual(s) responsible; and (5) ensuring that a similar violation will not occur in the future.

3. The person(s) named responsible for a violation shall be given an opportunity to (a) read the report of the facts and circumstances leading to the determination of responsibility and (b) provide a statement of any circumstances they believed to be extenuating. The individual named responsible shall be granted this opportunity even if he or she is no longer working where the violation occurred, or is retired or separated from the Department of Defense.

a. The opportunity to provide a second (i.e., final) statement should be offered after a final determination of responsibility has been made. The statement should not be based on an uncompleted investigation.

(1) The statement should first acknowledge that he or she has read the report and understands that he or she is being held responsible for the violation. If the individual can provide additional information, pertinent to the particular case, which was not addressed in the investigation and has a bearing on responsibility for the violation, he or she has the right, and should be requested, to do so.

(2) The individual also may refute statements made by others and make other comments. The final written statement, including any extenuating circumstances, shall be included in the Report of Violation and also attached to the summary report of violation submitted to the Under Secretary of Defense (Comptroller).

b. If the person(s) named responsible refuses to give a statement, request the person(s) to submit a signed statement of declination. If he or she refuses to sign a declination, include a statement to that effect, signed by an appropriate official, in the report. If the person(s) named responsible for the violation cannot be located despite a due diligent effort, a statement to that effect, signed by an appropriate official, shall be included in the report.

c. The report shall include an evaluation of any new or conflicting facts or circumstances when the statement of the responsible individual(s) differs from the report contents.

d. The report shall include a statement as to whether the person(s) determined to be responsible for the violation either did or did not knowingly and willfully incur the violation. If, in the judgment of the investigating officer, the violation was willfully committed, the procedures in Chapter 5, paragraph I.4. of this volume shall be followed.

4. The report shall include the required acknowledgements and a written statement, from the official responsible for determining the appropriate discipline for those individuals responsible for a violation, as required by the Under Secretary of Defense (Comptroller) in a memorandum dated December 19, 1994, subject: Violations of the Antideficiency Act. See section P of enclosure 7-1 and section B in Chapter 9 of this Volume for these requirements.

5. The investigating officer shall compile the Report of Violation and forward that report directly to the appointing official.

6. The appointing official shall add comments; ensure a legal review; coordinate the report with responsible officials in other functional areas involved in the violation (such as contracting, civil engineer or comptroller); and forward the report to the applicable Assistant Secretary of the Military Department, or the Comptroller or Senior Financial Manager for other DoD Components.

7. When the violation affects the funds of another DoD Component or the responsible individual is from another DoD Component, the appointing official shall (a) immediately notify the Office of the Under Secretary of Defense (Comptroller); (b) advise the other DoD Component involved before submission of the final summary report of violation; and (c) obtain coordination on the report from the other DoD Component involved.

C. **DOD COMPONENT SUMMARY REPORT OF VIOLATION.** After receipt of the Report of Violation from the appointing official, the Assistant Secretary of a Military Department for Financial Management, or Comptroller (or equivalent) for other DoD Components, shall ensure that a Summary Report of Violation is prepared, using the checklist at Enclosure 7-1. (Alternatively, the appointing official may prepare, or have the investigating officer prepare, and submit, the Summary Report of Violation.) The original and seven copies of the Summary Report shall be submitted to the Office of the Under Secretary of Defense (Comptroller). The Summary Report of Violation shall contain a copy of all pertinent documents referenced in the body of the report.

1. If funds of another DoD Component are involved, a copy of the Report of Violation shall be furnished to that Component.

2. If the same official is responsible for more than one violation under the same circumstances, one Report of Violation may encompass multiple violations. As an example, if--on several different occasions--an individual authorized obligations against an appropriation that should not have been used for that particular purpose, and funds in the correct appropriation were not available, those violations could be combined into one Report of Violation.

D. **REVIEW OF SUMMARY REPORT OF VIOLATION.** The Office of the Under Secretary of Defense (Comptroller) shall review the Summary Report of Violations for completeness, clarity, compliance with reporting requirements, and adequacy of corrective and administrative disciplinary action taken. If the Office of the Under Secretary of Defense (Comptroller) determines that the Summary Report of Violation does not meet the requirements of this Volume or DoD Directive 7200.1, the report shall be returned to the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components. That official will be asked to resubmit the report with the requested information within the period of time as specified by the Office of the Under Secretary of Defense (Comptroller).

E. **REPORT TO THE PRESIDENT AND THE CONGRESS.** Following receipt of the Summary Report of Violation from the Assistant Secretary of a Military Department for Financial Management, or Comptroller (or equivalent) for other DoD Components, the Office of the Under Secretary of Defense (Comptroller) shall prepare notification letters for the President, through the Director of the Office of Management and Budget the Resident Pro Tem of the Senate; and the Speaker of the House of Representatives. These letters notify the President and the Congress of the violation, its cause(s) and circumstances, the names of the individual(s) responsible for the violation, and the disciplinary action taken. The notification letters shall be coordinated with the Office of the Deputy General Counsel (Fiscal) (ODGC(F)).

F. **REPORT OF “NO VIOLATION.”** If the results of a formal investigation determine that there was no violation, the investigation report shall include that conclusion supported by appropriate justification.

1. The Office of the Under Secretary of Defense (Comptroller) shall evaluate the “no violation” investigation report and submit a copy to the ODGC(F) for a review and concurrence.

2. If the Office of the Under Secretary of Defense (Comptroller) and the ODGC(F) agree with the conclusion of “no violation,” no further action is required of the DoD Component involved. If, however, the Office of the Under Secretary of Defense (Comptroller) and the ODGC(F) do not agree that there was “no violation,” the report shall be returned to the applicable Assistant Secretary of the Military Department for Financial Management, or equivalent. That official shall be requested to reopen the investigation and report the results, provide additional documentation of “no violation.” or accomplish some other action within a specified timeframe.

3. After the second investigation is completed or the requested action has been taken, the investigating officer shall submit the revised report to the applicable Assistant Secretary of the Military Department for Financial Management, or equivalent, for the preparation of a summary report of violation in accordance with the procedures in section B, above. The summary report shall be submitted to the Office of the Under Secretary of Defense (Comptroller) within 15 days following receipt by the applicable Assistant Secretary of the Military Department for Financial Management or equivalent.